IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No.3140 of 2002
Date of Decision: 24.8.2007

Mukhtiar Singh ...Appellant

Versus

Balbir Singh etc. ...Respondents

Coram: Hon'ble Mr. Justice Hemant Gupta.

Present: Shri Ashok Singla, Advocate, for the appellant.

Shri G.L. Bajaj, Advocate,
for respondent Nos. 5, 7, 8, 20, 21, 23 and 24.

HEMANT GUPTA, J.

The plaintiff is in second appeal aggrieved against the judgment and decree passed by the Courts below, whereby the suit for declaration that the plaintiff has become owner of land measuring 22 kanals 6 marlas by way of adverse possession, was dismissed.

It is the case of the petitioner that the plaintiff is in possession of the suit land since 1958 and such possession is open, hostile, uninterrupted, notorious and without paying any rent or Batai for more than 12 years and, therefore, it has ripened into ownership. It was asserted that two months prior to the filing of the suit, the defendants started asserting their rights in the suit land and tried to take the forcible possession and, therefore, the suit for declaration was filed. In the written statement, the defendants have taken a stand that the suit is not maintainable and that the plaintiff has no cause of action against the defendants.

It was found by the learned trial Court that the plaintiff is recorded in possession of the suit property in the Jamabandi for the years 1966-67 (Exhibit P.1) as vendee from Sarwan Singh. The same

entries are reflected in the Jamabandis for the years 1971-72, 1976-77, 1981-82, 1985-86, 1991-92 and 1995-96 Exhibits P.2 to P.7 respectively. The revenue record does not favour the claim of the plaintiff that he is in adverse possession. In fact, he is in possession of the suit land as co-sharer. Thus, it cannot be said that his possession has become adverse to the defendants. The learned first Appellate Court affirmed the finding that from the Jamabandi Exhibits P.1 to P.7, from the years 1966-67 to 1995-1996, the plaintiff has been shown to be in possession of the suit land as purchaser from Sarwan Singh, co-sharer. Therefore, the possession of the plaintiff is that of a co-sharer and not as a trespasser. From the revenue record produced, it is apparent that the plaintiff is a co-sharer. Therefore, the adverse possession against the other co-owner(s) is not proved.

Learned counsel for the appellant has sought to raise a forceful argument that the suit is maintainable and the judgment of this Court reported as in **Bhim Singh and others v. Zile Singh and others 2006(3) PLR 159,** does not lay down a correct law. The said question does not arise in the present case as in the facts of the present case, it has been found that the possession of the plaintiff is not adverse. The said finding is finding of fact based upon appreciation of evidence. It could not be pointed out that any evidence has been misread and not taken into consideration.

The reasoning given by the Courts below cannot be said to be suffering from any patent illegality or irregularity, which may give rise to any substantial question of law in the present appeal.

Hence, the present appeal is dismissed.

24-08-2007 (HEMANT GUPTA)
ds JUDGE